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**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

WILLIAM M. PAREMBA,

Plaintiff(s),

v.

MICHAEL J. ASTRUE,

Defendant(s).

2:13-CV-81 JCM (NJK)

**ORDER**

Presently before the court is the report and recommendation of Magistrate Judge Koppe. (Doc. # 3). Plaintiff timely filed objections to the report and recommendation. (Doc. # 4).

Plaintiff filed a motion/application to proceed *in forma pauperis*. (See doc. # 1). The magistrate judge issued an order denying the motion/application. (See doc. # 2). In denying the motion/application, the magistrate judge held as follows:

“Plaintiff has submitted an incomplete Application to Proceed *in Forma Pauperis*. Plaintiff’s response to question 7 is incomplete, as he fails to include his child’s initials, or any amount that he contributes to him for support. As a result, the court cannot determine whether Plaintiff qualifies to proceed *in forma pauperis*, and his Application will be denied without prejudice.”

(Doc. # 2).

The magistrate judge then gave plaintiff two options: (1) plaintiff could pay the \$350 filing

1 fee; or, (2) plaintiff could complete an application to proceed *in forma pauperis* because the  
2 magistrate judge could not determine whether plaintiff qualified to proceed *in forma pauperis*  
3 without plaintiff completing the application. (*See* doc. # 2).

4 Plaintiff never complied with the magistrate judge's order. The magistrate judge then issued  
5 a report and recommendation that plaintiff's complaint be dismissed without prejudice. (Doc. # 3).  
6 Plaintiff filed objections the very next day. (Doc. # 4). In the objections, plaintiff's counsel  
7 essentially states that his legal assistant failed to file the amended application. (*See id.*). Plaintiff's  
8 counsel even filed a declaration of the legal assistant corroborating this story.

9 Plaintiff seeks relief pursuant to Federal Rule of Civil Procedure 60(b), which may provide  
10 relief to a party based on mistake, inadvertence, or excusable neglect. This is true. Plaintiff's  
11 counsel then states that he has attached the amended application that complies with the magistrate  
12 judge's original order. This is not true.

13 The defect in plaintiff's original application, as stated by the magistrate judge, was that  
14 plaintiff failed (1) to include his child's initials and (2) provide any amount that he contributes to his  
15 child for support. Plaintiff's amended application, (doc. # 5), corrects only one of the deficiencies.  
16 The amended application adds the child's initials. The amended application does not state whether  
17 plaintiff contributes to the child in support (or, if the answer is yes, how much plaintiff contributes  
18 in child support). (*See id.*).<sup>1</sup>

19 This court "may accept, reject, or modify, in whole or in part, the findings or  
20 recommendations made by the magistrate." 28 U.S.C. § 636(b)(1). Where a party timely objects  
21 to a magistrate judge's report and recommendation, then the court is required to "make a de novo  
22 determination of those portions of the [report and recommendation] to which objection is made."  
23 28 U.S.C. § 636(b)(1).

24 The court will grant plaintiff one more opportunity to comply with the magistrate judge's  
25 order in its entirety. This is plaintiff's final chance. If plaintiff fails to provide the amount he  
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27 <sup>1</sup> It is also worth noting that question 7 specifically states that a plaintiff attempting to proceed in forma pauperis  
28 must provide "how much I contribute" in support of any dependents.

1 provides in support of his dependent child then this court will dismiss the complaint without  
2 prejudice.

3 Accordingly,

4 IT IS HEREBY ORDERED, ADJUDGED, DECREED that the report and recommendation  
5 of Magistrate Judge Koppe (doc. # 3) be, and the same hereby, ADOPTED in part and REJECTED  
6 in part consistent with the foregoing.

7 IT IS FURTHER ORDERED that plaintiff's amended motion/application to proceed *in forma*  
8 *pauperis* (doc. # 5) be, and the same hereby, is DENIED consistent with the foregoing.

9 IT IS FURTHER ORDERED that plaintiff shall have fourteen days from this order to correct  
10 all the deficiencies in the motion/application to proceed *in forma pauperis*. If plaintiff does not  
11 comply then the clerk of the court is ORDERED to dismiss the action without prejudice.

12 DATED May 17, 2013.

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15 UNITED STATES DISTRICT JUDGE  
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